

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

May 4, 1993
AO-93-12

David J. Lionett
5 Candlewood Place
Worcester, MA 01606

Re: Political Committee
Expenditures for Out-of-Office Candidate

Dear Mr. Lionett:

This letter is in response to your March 11, 1993, letter requesting an advisory opinion regarding the propriety of your state political committee, Citizens for David J. Lionett ("Committee"), making expenditures relative to your political future although you no longer hold elective office.

Specifically, you have stated in your letter as well as in a February 2, 1993 telephone conversation with this office's General Counsel, Peter Sturges, that you served as a state representative through January of this year. In seeking election and re-election to the state legislature the Committee has raised and expended funds in support of these candidacies. In addition, you were also a candidate for U.S. Congress in 1992.¹ You further state that your name has been mentioned as a possible candidate for public office and may, in fact, run for office at some point in the future although you have not decided to run for a particular public office. You have asked if the Committee may raise and expend funds subject to the same legal and regulatory constraints which existed during the years 1990 through 1992 while you were in office.

M.G.L. c.55, s.6 provides, in pertinent part, that political committees such as yours may:

receive, pay and expend money or other things of value for the enhancement of the political future of the candidate or the principle, for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use . . .

1. Except for certain transactions such as transfers from a candidate's federal account to that candidate's state account, a candidate for U.S. Congress is, of course, subject to the jurisdiction of the Federal Election Commission in accordance with federal law and regulation. See 2 USCA s. 431 et seq.

Other parts of the campaign finance law as well as regulations promulgated by this office provide additional guidance, restrictions and standards relative to the campaign finance activity by political committees and persons working on their behalf. See M.G.L. c.55 generally and 970 CMR 1.00 et seq.

This office has frequently advised candidates and political committees orally that it is unnecessary that the specific office sought be known prior to organizing a political committee and seeking contributions or making expenditures. This interpretation is based upon clear statutory language in the definition of candidate, as set forth in M.G.L. c.55, s.1, This definition provides, in relevant part:

"Candidate", any individual who seeks nomination or election to public office, whether or not such individual is nominated or elected. For the purpose of this chapter, an individual shall be deemed to be seeking nomination or election to such office if he has (1) received a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made (emphasis added) . . .

Also, it has been the long-standing position of this office that a political committee must be duly organized prior to soliciting or receiving contributions or making expenditures. See M.G.L. c.55, ss. 1, 5, 6 and 18. Accordingly, as long as you continue to be a candidate, your political committee may raise and expend funds on your behalf subject to the general requirements of the campaign finance law and regulation. Our inquiry turns back, therefore, to the definition of a candidate.

In accordance with M.G.L. c.55, s.1 a person is deemed a candidate for campaign finance purposes under three circumstances. Two of these circumstances, one which pertains to elected officials and another which pertains to those whose have taken the action necessary under the laws of the commonwealth to qualify for nomination or election, do not apply to you at this time.

Therefore, whether you continue to be a candidate depends upon your qualifying under that portion of section one quoted above.

As this office stated in AO-87-01:

[S]ince the establishment of a political committee requires the consent of the candidate, the continued existence of such a committee, whether or not there is current campaign finance activity, creates a strong presumption that a "candidacy" exists. AO-87-01 at page 2.

However, although a strong presumption exists in these circumstances, e.g. the continued existence of a political committee, it is a presumption that can be rebutted. Again, as the office stated in AO-87-01:

[S]ignificant facts . . . might compel a determination that an individual is not a candidate under the campaign finance law, notwithstanding the existence of a political committee. For instance, an individual who has not received any contributions or made any expenditures over a period of several years may not be a "candidate" under the . . . law. AO-87-01 at pages 2-3.


Of course, such a determination would have to be made by carefully reviewing all relevant factors including, but not limited to, the existence or non-existence of contributions and expenditures. Under the circumstances that you have outlined briefly, there is no reason to conclude that you are not a candidate. You only recently left office, have been publicly mentioned as a possible candidate for public office and have sought this opinion to confirm that your political committee may, subject to the general restrictions of chapter 55, raise and expend funds in furtherance of your political future.

For all the above reasons, it is this office's opinion that your political committee may raise and expend funds for the enhancement of your political future consistent with the requirements set forth in M.G.L. c.55 and the regulations promulgated thereto as long as you are a candidate.²

This opinion has been rendered solely on the basis of the representations made in your letter as well as the prior telephone conversations with this office's General Counsel as noted above and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director

2. If, at some future date, you decide that you will not seek public office or otherwise are no longer a candidate, you must dissolve your political committee in accordance with the residual funds clause. See M.G.L. c.55, s.18.